



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

FLIESLER MEYER, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO, CA 94111

COPY MAILED

MAY 04 2005

OFFICE OF PETITIONS

In re Patent No. 6,800,254
Nguyen et al.
Issue Date: October 5, 2004
Application No. 09/589,633
Filed: June 7, 2000
Attorney Docket No. SIM014

:
: DECISION ON REQUEST
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO
: ISSUE CERTIFICATE OF
: CORRECTION
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705," filed December 10, 2004. Patentees request that the patent term adjustment indicated in the patent be corrected from eight hundred ninety-one (891) days to nine hundred forty-two (942) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

On October 5, 2004, the above-identified application matured into U.S. Patent No. 6,800,254. The instant request for reconsideration filed December 10, 2004 (certificate of mailing Monday, December 6, 2004), was timely filed within 2 months of the date the patent issued. See § 1.705(d). The patent issued with a revised Patent Term Adjustment (PTA) of 891 days. The initial determination of PTA of 942 days was reduced by 51 days for applicants' submission of a paper styled "Examiner Initiated Interview Summary," filed August 16, 2004. Patentees dispute this reduction.

Patentees' arguments have been considered, but not found persuasive. It is undisputed that a paper was filed after the mailing of the notice of allowance. Pursuant to § 1.704(c)(10), filing of a paper after the mailing of a notice of allowance is a "failure to engage in reasonable efforts" to conclude processing or examination of an application. However, by Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of certain papers after the mailing of a notice of allowance will not be considered a "failure to

engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). The paper filed by patentees is not identified as one of the papers the filing of which the Director has specifically deemed not to be a failure to engage in reasonable efforts within the meaning of § 1.704(c)(10). Nor do the circumstances of the filing of the paper warrant such a conclusion. It is noted that the examiner's interview summary specifically stated that

it is not necessary for applicant to provide a separate record of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the notice of allowability.

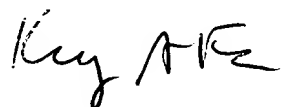
Accordingly, the filing of the paper styled "Examiner Initiated Interview Summary" is considered a "failure to engage" pursuant to § 1.704(c)(10). Thus, the reduction of 51 days of patent term adjustment for its filing is proper.

The patent term adjustment indicated in the patent of eight hundred ninety-one **(891)** days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being returned to Files Repository for storage as a patented case.

Telephone inquiries specific to this decision should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy